

**M & N Mail Service, Inc. and Ed Felks, Petitioner
and Highway and Local Motor Freight Employ-
ees' Local Union No. 667.** Case 26–RD–1003

August 27, 1998

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS FOX, LIEBMAN,
HURTGEN, AND BRAME

The National Labor Relations Board has considered the Union's request for review of the Regional Director's Decision and Direction of Election (pertinent portions are attached as an appendix).¹ The request for review is denied as it raises no substantial issues warranting review.

In denying review of the Regional Director's direction of an election by mail-ballot, we find that the Regional Director did not abuse his discretion. The Regional Director's rationale for ordering a mail-ballot election is consistent with the Casehandling Manual and our recent decision in *San Diego Gas & Electric*, 325 NLRB 1143 (1998). Under the Casehandling Manual,² voting may be conducted by mail-ballot where eligible voters are "scattered" because of their duties. In *San Diego*, we set forth guidelines clarifying the circumstances under which it is within the Regional Director's discretion to direct the use of mail-ballots. Under the guidelines, a mail-ballot election may be appropriate where employees are scattered because of their job duties in terms of geography and/or varied work schedules, so that all employees cannot be present at a common place at a common time to vote manually. Where these situations exist, the Regional Director, in the exercise of discretion, should also consider, inter alia, the desires of the parties and the efficient use of Board resources.

Here, the Regional Director found that the Employer's employees are scattered in the sense that their work schedules vary significantly. The Employer's 34 over-the-road truckdrivers haul mail between Memphis and New Orleans, leaving at various times throughout the day and night and not returning to Memphis until the following day. There are about 12 runs departing from the Memphis area each day and returning the next. The Regional Director found that the drivers have a staggered work schedule so that if the election were confined to any given 2-workday period, five of the employees (15 percent of the unit) would not be scheduled to work or be available at the Employer's premises for a manually conducted election.

¹ Review was requested of the Regional Director's decision to conduct the election by mail-ballot. The Regional Director's rationale for that decision was contained in a letter to the parties, which is also attached hereto.

² Casehandling Manual (Part Two) Representation Proceedings, Sec. 11336.

Having found that the employees were "scattered," the Regional Director then properly considered the parties' desires and the efficient use of Board resources. The Regional Director found that the Employer and the decertification Petitioner stipulated to a mail-ballot election. Although the Union opposed a mail-ballot election, the Board in *San Diego* required only that the Regional Director consider the positions of all the parties, not that there be unanimity for holding a mail-ballot election.

With respect to husbanding of Board resources, the Regional Director found that in order to vote manually over 2 consecutive days, the voting would have to be scheduled from 4 to 8:30 a.m. and from 3 to 8 p.m. Further, he concluded that the utilization of a Board agent for a minimum of 2 days under these circumstances would not be an efficient use of limited available Board resources.

The Regional Director's decision fits squarely within the parameters of the Casehandling Manual and the guidelines set forth in *San Diego*. Accordingly, we conclude that the Regional Director acted well within the discretion that he has been afforded to determine the method of conducting the election, and we deny review of his decision to hold the election by mail-ballot.

CHAIRMAN GOULD, concurring.

I join my colleagues in denying review of the Regional Director's decision directing a mail-ballot election. As I stated in my separate opinion in *San Diego Gas & Electric*, 325 NLRB 1143 (1998), I would find the use of mail-ballots appropriate in all situations where the prevailing conditions are such that they are necessary to conserve Agency resources and/or enfranchise employees. I agree that under the guidelines set forth in *San Diego Gas*, a mail-ballot is appropriate in the instant case. I would, however, also find the Regional Director's reliance on the Agency's budgetary constraints is a sufficient basis for directing a mail-ballot election. See *San Diego Gas*, supra, 325 NLRB 1143; *London's Farm Dairy*, 323 NLRB 1057 fn. 3 (1997); and *Willamette Industries*, 322 NLRB 856 (1997) (W. Gould concurring).

MEMBERS HURTGEN AND BRAME, dissenting.

We would hold a manual election. The Regional Director's decision to hold a mail-ballot election rests primarily on budgetary grounds. That is, the election would be held on 2 consecutive days from 4 to 8:30 a.m. and from 3 to 8 p.m.¹ It is clear that budgetary constraints cannot be the sole or primary basis for holding a mail-ballot.² We recognize that 5 employees (in a unit of 34) would not be scheduled to work on either of the 2 days. However, there is no showing that they could not get to

¹ Since the facility is only 20 minutes away from the Regional Office, the Board agent need not wait between shifts.

² *Willamette Industries*, 322 NLRB 856 (1997).

the polls on either of those days. And, even if they could not, there is no reason (other than a budgetary one) that a Board agent could not travel 20 minutes and hold the election on a third day. In these circumstances, there is no showing of an adequate basis for holding a mail-ballot election. See the dissent in *San Diego Gas*, 325 NLRB 1143 (1998).

APPENDIX

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time over-the-road truck drivers based at M & N Mail Service, Inc., West Memphis, Arkansas facility, including full-time drivers regularly servicing the Memphis Area Post Office.

EXCLUDED: All office clerical employees, watchmen, guards, mechanics and supervisors as defined in the Act.

DIRECTION OF ELECTION³

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate by mail-ballot as specifically set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by High-

way and Local Motor Freight Employees, Local Union No. 667.

APPENDIX A

REGIONAL DIRECTOR'S LETTER TO THE PARTIES

As indicated in the Decision and Direction of Election issued this date, I have directed that the election in the above-captioned matter be conducted by mail-ballot. My specific reasons for utilizing the mail-balloting procedure, as opposed to manual balloting at the Employer's West Memphis, Arkansas facility, are as follows:

As reflected in the record, the Employer employs 34 employees in the undisputed appropriate unit. The Employer, under contract with the United States Postal Service, utilizes its employees to transport mail back and forth from Memphis to New Orleans. The employees depart at various hours throughout the day and night. There are approximately 12 runs departing from the Memphis area each day and returning the following day. During any given 2-day period five employees are not scheduled to work and thus would be unavailable at the Employer's premises in a 2-consecutive-day manually conducted election.

Furthermore, in order to manually vote the employees in the unit who have scheduled runs in 2 consecutive days, it would be necessary to conduct the voting from 4 a.m. to 8:30 a.m. and from 3 p.m. to 8 p.m. on those days. Consequently, 19 hours of an agent's time would be utilized, not counting the preelection conference, set-up and take-down time, and a minimal amount of travel time. The lengthy off-duty hours of the election would result in substantial compensatory time being accrued by the Board agent assigned to conduct the election. The compensatory time earned would allow the agent an additional approximate 2 working days off at his or her convenience.

As you know the Agency, as a whole, is currently experiencing a budgetary crisis which has resulted in the near elimination of travel for unfair labor practice charge investigations and a moratorium on ulp trials this coming September. Budget considerations have limited hiring in recent years to the degree that this Region, as most, is processing more cases with less available staff. Accordingly, given the current case backlog in the Regional Office and the Agency's budgetary constraints, without question the utilization of one Board agent for a minimum of 2 days to conduct an election under these circumstances is not an efficient utilization of limited available resources. See *Reynolds Wheels International*, 323 NLRB 1062 (1997). It is noted that the Petitioner and Employer are in agreement that a mail-ballot is appropriate given the facts described here and had, in fact, stipulated to a mail-ballot election prior to the issuance of the notice of preelection hearing.

³ The only issue presented for hearing by the parties was whether a manual ballot or a mail-ballot procedure should be utilized in the election. In view of my finding that under the circumstances of the instant case, a mail-ballot election is appropriate, attached hereto as Appendix A is a letter to the parties explaining my rationale for ordering a mail-ballot election.